IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.3258/02

Rupa Ram **Versus** Bhuwana & Ors.

DATE OF ORDER :: 11/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Shailesh Prakash Sharma, for petitioner
Mr. Lokesh Sharma, for respondent

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Instant petition has been filed by petitioner assailing the orders passed by Gram Panchayat Ann.4 dated 5th November, 1999, Assistant Collector dated 15th May, 2000 [Ann.5] and so also by Board of Revenue dated 21st February, 2002 [Ann.7].

Petitioner initially filed application u/s.251 of Rajasthan Tenancy Act, 1955 seeking right of way over Khasra No.167 which belongs to respondent No.1 Bhuwana. His grievance was that earlier there was a way of 10 ft., but path has been encroached by the respondents and he is under legal right to seek excess over the path which was available for sufficient long time. Learned Tehsildar vide order dated 9th September, 1997 allowed his application filed u/s.251 of Act, 1955 – against which respondent filed revision petition before the Board of Revenue and raised objection that the State Government has issued notification on 4th September, 1982 whereby application was to be first entertained and to be

filed before Village Panchayat for its disposal and if Village Panchayat fails to pass order in the time provided therein i.e. 45 days, the matter may be examined by the Tehsildar in that situation and only thereafter, the order can be passed by him. Since the application was straightway entertained by Tehsildar under exercise of power u/s.251 of Act, 1955 which in the facts of instant case was not competent to do so. Accepting the objection raised by respondents, revision was allowed vide order dated 10th June, 1999 and the matter was remanded back to Village Panchayat to examine the application filed by petitioner on merits.

The Village Panchayat after hearing counsel for parties to the dispute including petitioner and respondent herein, dismissed the application vide order Ann.4 dated 5th November, 1999 – against which petitioner filed appeal before the Assistant Collector that too was dismissed on merits vide Ann.5 dated 15th May, 2000 and the revision preferred by him against said order was also dismissed on 21st February, 2002 [Ann.7].

Counsel for petitioner contends that learned Board of Revenue has recorded a finding that petitioner has misrepresented earlier before the Board of Revenue and it was claimed that 5 ft. way from Khara No.167 and so also from Khasra No.170 was demanded/prayed for, whereas infact,

while filing the present revision, the petitioner has claimed way of 5 ft. from Khasra Nos.167 and 168, this according to Board of Revenue, was misrepresentation made by him and after recording said finding failed to examine his grievance on merits and accordingly, dismissed his revision petition. This according to counsel is incorrect since Khasra Nos.167, 170 belong to respondent and petitioner is holder of Khasra Nos.168 & 169 and this was a case of parties to the dispute throughout that way of 5 ft. from Khasra Nos.167 & 168 was prayed for and Khasra No.170 was never questioned by petitioner or by respondent at any stage during proceedings pending before the Village Panchayat or at any other Forum where dispute has been examined. According to him, since merits of dispute have not been examined by Board of Revenue and this is factually incorrect statement recorded, such finding is not legally sustainable. Counsel has further submitted that under the notification dated 4th September, 1982 the Village Panchayat has to decide the dispute within 45 days of filing of application and on its expiry, he is ceased to examine and the matter is to be referred to the concerned Tehsildar for adjudication and he may suo moto exercise power, but atleast the Village Panchayat is not competent to adjudicate upon the dispute after expiry of stipulated period provided under the notification referred to supra.

Counsel for respondents has vehemently opposed the submission of petitioner's counsel and submitted that so far as factual aspect is concerned, the same has been examined by Village Panchayat as well as by Assistant Collector in detail and the finding has been recorded after taking note of revenue record and so also the evidence which was led before the concerned authority and the petitioner has not been able to controvert about the merits of his claim which has been decided atleast at two stages i.e. Village Panchayat and Assistant Collector. If there is any factual error recorded by the Board of Revenue in its order impugned that otherwise is not going to cause any prejudice to petitioner.

So far as objection with respect to order passed by Village Panchayat within 45 days in terms of notification is concerned, counsel submits that there was no objection raised by him in revision petition which he has preferred before Board of Revenue. As such, no such objection can be raised which is a mixed question of law and fact, at a later stage and it is not available for this court to examine about the jurisdiction exercised by Village Panchayat while deciding application originally filed by him in November, 1999.

I have considered the submission of both the counsel and with their assistance examined the material available on record.

This fact remain undisputed that so far as Khasra No.170 is concerned, either of parties has not raised any grievance praying for any way out of said khasra number throughout in the proceedings way has been prayed for 5 ft. from Khasra No.167 which belongs to respondent and 5 ft. from petitioner's own Khasra No.168 and Khasra No.170 at no point of time came into picture and it appears that the finding which has been recorded by the Board of Revenue while disposing of revision petition preferred by petitioner, seems to be incorrect and is not legally sustainable, certainly the dispute which the petitioner has raised before the Revisional Authority in view of finding of misrepresentation recorded has not been examined on merits.

So far as other submission is concerned, no opinion at this stage can be expressed by this court, particularly, when the matter is yet to be adjudicated by the Board of Revenue on the revision petition filed by petitioner.

Consequently, this court considers it proper to remand the case back to the Board of Revenue to examine the dispute raised by petitioner on merits.

Consequently, the writ petition stands partly allowed and the order passed by the Board of Revenue Ann.7 dated 21st February, 2002 is hereby quashed and set aside and the matter is remanded back to Board of Revenue for adjudication of the dispute on merits. Both the parties are directed to appear before the Board of Revenue on 7th May, 2007. Since it is a matter pending for sufficient long time, it is expected that the Board of Revenue may expeditiously dispose of revision petition in accordance with law. No order as to costs.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.